

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Crim. No. 04-053-SLR
)
TYRONE FAINES,)
)
 Defendant.)

MEMORANDUM ORDER

Defendant moves to sever counts I, II and III of the indictment from Counts IV, V and VI¹ pursuant to Fed. R. Crim. P. 8(a) and 14. (D.I. 18) He argues that joinder of the two separate robberies in a single trial would be prejudicial. Specifically he asserts that, although the separate counts involve the similar charge of bank robbery, the cases are not part of the same occurrence or transaction and cannot be said to constitute a common plan or scheme. Moreover, the two robberies occurred on different occasions, involve different witnesses and distinct factual situations.

Plaintiff contends that the counts were properly joined in the indictment pursuant to Fed. R. Crim. P. 8(a) because the two robberies are of the same or similar character. (D.I. 23)

¹Defendant is charged in a six count indictment, charging him with two separate bank robberies. Counts I, II and III relate to a bank robbery that occurred on January 14, 2004 at Sun National Bank. Counts IV, V and VI relate to a bank robbery that occurred on February 3, 2004 at Artisans Bank. (D.I. 18)

Moreover, severance under R. 14 is inappropriate, argues plaintiff, because the robberies were nearly identical and both: (1) occurred in the City of Wilmington about eight blocks apart; (2) occurred between 9:00 and 10:00 a.m.; (3) were committed by black males, each armed with handguns, each wearing dark, puffy clothing and wearing hoods and masks; (4) one robber vaulted the teller's counter and demanded that a teller open the safe and the stolen money was placed in a white plastic bag; and (5) the suspects left the bank on foot. Surveillance tapes revealed that the suspects in the Artisans robbery fled to an awaiting getaway car. (Id. at Ex. 1-3) There was no similar surveillance tape relevant to the Sun robbery.

Another distinction between the robberies is fingerprint evidence discovered at Sun Bank. (D.I. 25 at Exs. A-F) This print matches defendant and would be introduced as proof of his participation in the Sun robbery. There is, however, no fingerprint evidence linking him to the Artisans robbery.

Plaintiff maintains that defendant's arrest on February 19, 2004² provides another, significant link between the robberies. On that date, defendant was driving a vehicle similar to the one identified as the getaway car in the Artisans robbery. A police

²This arrest was the subject of an evidentiary hearing held on November 10, 2004 in response to defendant's motion to suppress evidence seized as a result of the search of the vehicle. A more detailed account of that arrest can be found in the memorandum order issued concomitantly. (D.I. 24)

officer watching the area spotted the car and followed it to investigate. After defendant's car committed a traffic offense and failed to stop for the officer, a protracted high-speed chase occurred through the City of Wilmington. A gun, white bag and other items were recovered from the scene and the vehicle. Plaintiff indicates this evidence would be admissible against defendant as to both robberies in the indictment. Plaintiff also suggests that defendant's flight from the pursuing officers would be admissible to demonstrate guilt or fear of apprehension.

Fed. R. Crim. Pro. 8(a) allows for an indictment to charge a defendant in separate counts with two or more offenses if "the offenses charged are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.

Rule 14(a) provides for relief from prejudicial joinder:

If the joinder of offenses or defendants in an indictment, or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires.

Rule 14 is "designed 'to promote economy and efficiency and to avoid a multiplicity of trials, [as long as] these objectives can be achieved without substantial prejudice to the right of the defendants to a fair trial.'" Zafiro v. United States, 506 U.S. 534, 537 (1993) (quoting Bruton v. United States, 391 U.S. 123, 131 (1968)). Relatedly, "there is a preference in the federal

system for joint trials of defendants who are indicted together” and “defendants are not entitled to severance merely because they may have a better chance of acquittal in separate trials.”

Zafiro, 506 U.S. at 540.

The “denial of severance is committed to the sound discretion of the trial judge.” United States v. Eufrazio, 935 F.2d 553, 568 (3d Cir. 1991). To warrant severance, a defendant must demonstrate that joinder would result in a manifestly unfair trial. Gov’t of V.I. v. Sanes, 57 F.3d 338, 341-342 (3d Cir. 1995).

Applying this authority to the record at bar, the court finds that defendant will not be prejudiced by keeping the counts of the indictment together. Significantly, the police reports demonstrate a similarity between the robberies as well as an overlap of evidence. Although the Sun Bank fingerprint evidence links defendant to that robbery and not to the Artisans robbery, there is evidence of his connection to the latter robbery in the form of the getaway car, handgun thrown from the car and items seized from the vehicle.

Therefore, at Wilmington this 14th day of December, 2004, defendant’s motion to sever is denied.

Sue L. Robinson
United States District Judge